

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 138 of 2007.

Date of Decision: 21st September, 2007.

Shri Bir Bhadur Singh ..Appellant.

Versus.

Smt.Vidya Devi ..Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting? No

For the Appellant: Mr.S.D. Vasudeva, Advocate.

For the Respondent: Mr.Bhupinder Pathania, vice Mr.Deepak Bhasin, Advocate.

Deepak Gupta, J.(Oral)

This appeal under Section 9 of the Hindu Marriage Act (hereinafter referred to as the Act) is directed against the order of the learned Civil Judge, Junior Division, Court No.1, Rohru, exercising the powers of District Judge whereby he has rejected the petition filed by the appellant-husband for restitution of conjugal rights.

The facts of the case as set out by the husband himself make interesting reading. According to the husband he was married to respondent Vidya Devi but she did not do any house-hold work nor she worked in the field. The husband alleged that Vidya Devi instigated him to marry some other lady who could do their household and other work. According to him on the instigation of wife-respondent he married one Smt.Hari Ganga. The husband averred that he has two children from the wed-lock with the respondent whereas the respondent has contended that three children were born

out of this wed-lock. The husband also admits that one child was born out of the wed-lock with Hari Ganga. According to the husband he entered into a divorce with Hari Ganga on 8.9.2004. Thereafter, on 24th September, 2004 he instituted this petition for restitution of conjugal rights.

The provisions of Section 9 are not meant to come to the aid of the person like the present appellant. He is admittedly a person who has married second time during the pendency of the first marriage. Even the divorce with Hari Ganga has not been proved on record but according to the facts on record both he and Hari Ganga submitted some affidavits with the Panchayat that they had divorced. In fact his second marriage itself was illegal because there could be no second marriage during the subsistence of the first marriage. The appellant's living with Hari Ganga is a sufficient ground for Vidya Devi not to live with him. It is apparent that till Smt. Hari Ganga and appellant were living together, he had no intention to call Vidya Devi back. He filed the present petition under Section 9 of the Act when Hari Ganga left him. It is apparent that the intention of the husband is not to get to his respondent-wife back. His intention is only to get out of the order passed against him under Section 125 Cr.P.C. He contested the proceeding under Section 125 Cr.P.C. and just before the order was going to be passed in the said case he filed the petition under Section 9 of the Act.

Keeping in view the aforesaid facts and circumstances of the case, I find no merit in the appeal which is dismissed.

September 21, 2007.
PV

(Deepak Gupta),
Judge.